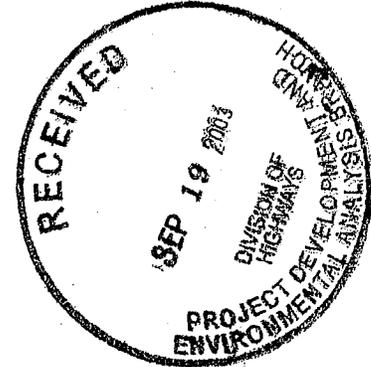




4/11/03

September 15, 2003

Dr. Gregory J. Thorpe, PhD., Manager
Planning & Environmental Branch
N.C. Department of Transportation
1548 Mail Service Center
Raleigh, North Carolina, 27699-1548



Dear Dr. Thorpe:

Re: Certification Pursuant to Section 401 of the Federal Clean Water Act,
Modification to the improvements to US 220 and the Bypass of Ellerbe and the extension of NC 73 (Ellerbe Connector) TIP R-2231 in Richmond County, Federal Aid Project NHF-45-1(49), State Project No. 8.T550803, WQC Project No. 000874.

Attached hereto is a modification to Certification No. 3419 issued to the North Carolina Department of Transportation on April 1, 2003. The attached modification approves the final design for the Key Branch Mitigation Site as described in your submittal dated August 22, 2003. The mitigation site shall be constructed in accordance with the design submitted in your application dated August 22, 2003 as well as the conditions listed in this certification. This approval fulfills the NCDOT's responsibilities detailed in Condition 11 of the original 401 Water Quality Certification issued on April 1, 2003. Furthermore, this modification authorizes a change to condition 10 of the original 401 Water Quality Certification. Condition 10 is hereby changed to read:

Condition 10

A final plan for the Haithcock Mitigation Site shall be submitted, and written approval received from the NC Division of Water Quality, by December 31, 2003. If a plan is submitted to the NCDQW that cannot be approved, DOT will need to provide mitigation through use of another mitigation site.

It should be noted the modification is applicable only to the additional proposed activities. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated April 1, 2003 and all other corresponding modifications still apply except where superceded by this certification.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,

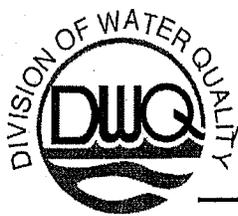
for
Alan W. Klimek, P.E.
Director

Attachments:

Modification to WQC No. 3419

cc: Wilmington District Corps of Engineers
Corps of Engineers Wilmington Field Office
DWQ Fayetteville Regional Office
Cathy Brittingham, Division of Coastal Management
Ron Ferrell, NC Wetlands Restoration Program
Central Files
File Copy





NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

THIS CERTIFICATION is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 2H, Section .0500. Attached hereto is a modification to Certification No. 3419 issued to the North Carolina Department of Transportation on April 1, 2003. The attached modification approves the final design for the Key Branch Mitigation Site as described in your submittal dated August 22, 2003. The mitigation site shall be constructed in accordance with the design submitted in your application dated August 22, 2003 as well as the conditions listed in this certification. This approval fulfills the NCDOT's responsibilities detailed in Condition 11 of the original 401 Water Quality Certification issued on April 1, 2003. Furthermore, this modification authorizes a change to condition 10 of the original 401 Water Quality Certification. Condition 10 is hereby changed to read:

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It should be noted the modification is applicable only to the additional proposed activities. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated April 1, 2003 and all other corresponding modifications still apply except where superseded by this certification.

The application provides adequate assurance that the discharge of fill material into the proposed wetlands in conjunction with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your application, as described in the Public Notice. Should your project change, you are required to notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If total wetland fills for this project (now or in the future exceed one acre, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you are required to comply with all the conditions listed below. In addition, you should obtain all other federal, state or local permits before proceeding with your project including (but not limited to) Sediment and Erosion control, Coastal Stormwater, Non-discharge and Water Supply watershed regulations.

Condition(s) of Certification:

1. NCDOT must follow the appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the *North Carolina Sediment and Erosion Control Planning and Design Manual* or the *North Carolina Surface Mining Manual* whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard (50 NTUs in all fresh water streams and rivers not designated as trout waters; 25 NTUs in all lakes and reservoirs, and all saltwater classes; and 10 NTUs in trout waters);
2. During the construction of the project, DOT shall strictly adhere to the *Best Management Practices for the Protection of Surface Waters* (NCDOT March 1997), specifically using all applicable preventive and control measures during the design, construction, and maintenance of the project. These measures shall be implemented prior to any ground disturbing activities;
3. Live concrete shall not come into contact with waters of the state until the concrete has hardened;



4. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit. Should waste or borrow sites be located in wetlands or stream, compensatory mitigation will be required since it is a direct impact from road construction activities;
5. No additional compensatory mitigation shall be done in accordance with this modification.
6. All channel relocations will be constructed in a dry work area, and stabilized before stream flows are diverted. Channel relocations will be completed and stabilized prior to diverting water into the new channel. Whenever possible, channel relocations shall be allowed to stabilize for an entire growing season. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30 foot wide wooded and an adjacent 20 foot wide vegetated buffer on both sides of the relocated channel to the maximum extent practical. A transitional phase incorporating coir fiber and seedling establishment is allowable. Also, rip-rap may be allowed if it is necessary to maintain the physical integrity of the stream, but the applicant must provide written justification and any calculations used to determine the extent of rip-rap coverage requested.
7. During the construction of the project, no staging of equipment of any kind is permitted in waters of the U.S., or protected riparian buffers.
8. All mechanized equipment operated near surface waters must be regularly inspected and maintained to prevent contamination of stream waters from fuels, lubricants, hydraulic fluids, or other toxic materials.
9. The presence of equipment in the channels must be minimized. Under no circumstances must rock, sand or other materials be dredged from the wetted stream channel under authorization of this permit, except in the immediate vicinity of the culverts.
10. All work shall be performed during low flow conditions.
11. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certificate of Completion" form to notify NCDWQ when all work included in the §401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the NC Division of Water Quality upon completion of the project. NCDOT is strongly advised to send in photographs upstream and downstream of each structure to document correct installation.
12. Discharging hydroseed mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is prohibited.
13. All other conditions written into previous Water Quality Certifications for this project still apply.

Violations of any condition herein set forth shall result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or coastal Area Management Act Permit. This Certification shall expire upon expiration of the 404 or CAMA permit.



If this Certification is unacceptable to you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 15th day of September 2003
DIVISION OF WATER QUALITY

Alan W. Klimek, P.E.
Director

Modification to WQC No. 3419

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